

Appl. No. : 10/747,812
Filed : December 29, 2003

REMARKS

The following remarks are responsive to the April 13, 2009 Office Action. Claims 1-3, 6-10, 14-24, and 26-36 were considered and rejected by the Examiner.

Rejections Under 35 U.S.C. § 103 (a)

Obviousness is a question of law based on underlying factual inquiries set forth in *Graham v. John Deere*: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the claimed invention and the prior art; and (3) resolving the level of ordinary skill in the pertinent art. Objective evidence of non-obviousness must be also considered. In assessing the differences between the claim and the cited references, every feature of the claim must be disclosed or suggested in the cited references or known to one skilled in the art in making a *prima facie* case of obviousness.

The Examiner has rejected independent Claims 1, 10, 22, and 31 over the primary reference U.S. Patent No. 6,214,282 to Katou in view of U.S. Patent No. 4,671,763 to Weiler and other secondary references (U.S. Patent No. 4,675,070 to Pasternicki, U.S. Patent No. 6,698,160 to Peronek et al., and U.S. Patent No. 5,049,349 to McCullough) under 35 U.S.C. § 103(a). For the reasons set forth below, Applicants disagree with the Examiner's characterization of Katou and Weiler and believe that these references fail to teach or suggest elements recited in Claims 1, 10, 22, and 31. Therefore, Applicants believe that the Examiner has failed to state a *prima facie* case of obviousness of these claims.

The Examiner cited Katou as teaching "a process and apparatus for manufacturing a [sealed plastic or foil container] comprising: grasping a neck portion of a preform with a positive transfer/handling system (figures 13B-13f) and maintaining control of the neck portion with the positive transfer system during blow molding (figures 13B-13c) the preform into a pouch, filling the pouch with a product (figure 13d), closing the filled pouch (figure 13e) and releasing the filled and sealed pouch from the system for use by a consumer." Applicants disagree with the Examiner's assessment of this reference.

Claim 1 recites a process for manufacturing and filling flexible pouches which includes the steps of "grasping a neck portion of a preform with a positive transfer system" and "maintaining positive control of the neck portion with the positive transfer system as the preform is advanced through forming, filling, closing and placing processes." Claim 10 recites an

apparatus comprising “a handling system that is adapted to convey a preform and a flexible, non-self supportive pouch produced from the preform by a neck portion through manufacturing, filling, and packaging systems and releasing the neck portion thereafter.” Claim 22 recites a process for manufacturing and filling flexible pouches comprising “maintaining positive control of the neck portion with the handling system through the steps of blow molding, filling, closing or capping, and placing,” and Claim 31 recites a process comprising “maintaining positive control of a preform through a neck portion through blow molding and filing processes.” Each of these independent claims further recite that “the neck portion of the preform is the same as the neck portion of the pouch.”

Accordingly, the presently pending claims recite apparatus and methods in which there is positive control of the neck portion of the preform throughout the process. In Figure 13a of Katou, the Examiner points to a portion of the parison that is part-way down the length of the parison and labels it as the “neck portion of the preform.” It can be clearly seen in Figure 13a – which illustrates part of the manufacturing process as stated by Katou (col. 8, lines 63-65) – that the parison is not being handled by what the Examiner labels as the “neck portion of the preform.” Therefore, Katou fails to disclose at least one element of each pending claim, and none of the other references cure this deficiency such that the Examiner’s combinations cannot render the claims obvious.

Furthermore, with regard to the other elements of the claims for which the Examiner relies upon Pasternicki and Peronek, although the Examiner argues that these references teach maintaining control of the neck while placing a pouch in a rigid container (Pasternicki) and during capping (Peronek), the Examiner does not provide any explanation of where, in these or any cited references or in the knowledge of one skilled in the art, there is a disclosure or suggestion that the control of the neck is to be *continuously maintained from any previous steps through the step and to any subsequent steps*. Accordingly, the combinations again fail to teach every element of the claims such that the references cannot render the claims obvious.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather,

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any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Conclusion

Applicants submit that all of the Examiner's rejections have been addressed and overcome, and that all claims are allowable over the art of record. Applicants have submitted amendments and arguments believed to be sufficient to overcome all of the outstanding rejections. Consequently, Applicants have not advanced every argument for the allowability of the claims over the references of record. As such, Applicants do not acquiesce to any of the Examiner's statements or characterizations not specifically traversed. Should the Examiner believe that any outstanding issues are resolvable in an Examiner's Amendment, the Examiner is invited to contact the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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